

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
DEARBORN RIVER BASIN (41U)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANTS: Janette L. Barnes; Kirk M. Barnes

**CASE 41U-0127-R-2023**  
41U 179324-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

FINDINGS OF FACT

1. Claim 41U 179324-00 was decreed with DNRC issue remarks:

THE PLACE OF USE, THOUGH NOT OBJECTED TO, HAS BEEN CHANGED TO REFLECT THE CHANGE IN NUMBER OF ACRES IRRIGATED. THIS MAY BE HEARD AT THE PRELIMINARY DECREE PHASE.  
THE LEGAL LAND DESCRIPTION FOR POINTS OF DIVERSION NO. 1 AND 2 COULD NOT BE REFINED FROM INFORMATION IN THE FILE. THE CLAIMED POINTS OF DIVERSION CANNOT BE CONFIRMED.

2. Claimants Janette L. Barnes and Kirk M. Barnes were ordered to meet with the DNRC to address the second issue remark decreed on claim 41U 179324-00.

3. On February 23, 2023, DNRC Water Resource Specialist Jason Larsen filed a Memorandum. (Doc. 2.00)<sup>1</sup> Mr. Larsen indicated he communicated with Mrs. Barnes through email, and he attached his emails with Mrs. Barnes to the Memorandum.

4. Regarding irrigation claim 41U 179324-00, Mr. Larsen stated:

Claim was never perfected by the original claimant or any landowner since, and the claim is not currently used. There are no points of diversion to locate or confirm, there are no headgates, and water is not being diverted from the claimed source in the legal land descriptions given for the claimed points of diversion.

Mr. Larsen recommended dismissing claim 41U 179324-00.

According to the Memorandum and the attached correspondence with the Claimants, Mr. Larsen gauged the Claimants' interest in filing a withdrawal of claim form and the Claimants were not interested in proactively withdrawing claim 41U 179324-00.

5. A deadline was set for Claimants Janette L. Barnes and Kirk M. Barnes to agree or disagree that claim 41U 179324-00 should be dismissed because it was never perfected or had been abandoned. The Order Setting Filing Deadline indicated that if nothing were filed by the deadline, this Water Master would conclude that Janette L. Barnes and Kirk M. Barnes agree claim 41U 179324-00 should be dismissed. The Order included the following language:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

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<sup>1</sup> "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

## PRINCIPLES AND CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

2. The Water Court must address all issue remarks decreed on a claim. Section 85-2-248, MCA.

3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

## RECOMMENDATION

1. Claim 41U 179324-00 should be dismissed.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

## **ELECTRONICALLY SIGNED AND DATED BELOW.**

### **Service via USPS Mail:**

Janette L. Barnes  
Kirk M. Barnes  
68 S 200 W  
Burley, ID 83318-5018

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
DEARBORN RIVER  
BASIN 41U**

**Water Right Number:** 41U 179324-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** DISMISSED

**Owners:** KIRK M BARNES  
68 S 200 W  
BURLEY, ID 83318 5018  
  
JANETTE L BARNES  
68 S 200 W  
BURLEY, ID 83318 5018

**\*Priority Date:**

**Type of Historical Right:**

**Purpose (use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** DEARBORN RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.